IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 17773 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE D.P.BUCH

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

KALABEN MAGAN ALIAS MANHARBHAINAROTTANBHAI ALIAS NATVARBHAI

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 17773 of 2003

MS SUBHADRA G PATEL for Petitioner No. 1

Ms Mita Panchal, AGP for respondents

CORAM : HON'BLE MR.JUSTICE D.P.BUCH

Date of decision: 06/05/2004

ORAL JUDGEMENT

The petitioner above named has preferred this petition under Article 226 of the Constitution of India for appropriate writ, order or direction, for quashing

and setting aside an order of detention dated 7.12.03 passed by respondent no.2 herein, in exercise of the powers u/s.3(2) of the Gujarat Prevention of Anti Social Activities Act, 1985 (for short, "the said Act").

2. It was alleged against the petitioner that five prohibition offences were registered against him before Western Division Prohibition Station and Alpad Proh.Station, at C.R.No. 808, 896, 901, 930 and 968 of 2003 on 28.9.2003, 11.10.2003, 12.10.2003, 2.11.2003 and 16.11.2003 for offence punishable u/s.66, 65, 81 and 116 of the Bombay Prohibition Act, 1949.

3. It was also alleged against the petitioner that two witnesses had given statements against the petitioner saying that he was engaged in bootlegging activities. On the strength of the aforesaid registered offences and two statements of unnamed witnesses, the detaining authority found that the petitioner was required to be detained, with a view to prevent him from indulging in bootlegging activities which amounted to a threat to public order and accordingly, the order of detention was passed against the petitioner.

4. Feeling aggrieved by the said order of his detention, the petitioner has preferred this petition before this Court. It has been contended here that on a mere fact that few offences were registered, it could not be said that there was a threat to public order. It has also been contended that names of the witnesses were not disclosed to the petitioner, and therefore, there was a violation of the principle of natural justice. That, therefore, the order of detention is illegal and hence, it may be quashed and set aside.

5. On receipt of the petition, Rule was issued and in response to the service of notice of Rule, Ms.Mita Panchal, learned AGP has appeared on behalf of the respondents. The learned AGP produces affidavit, which is taken on record. I have heard the learned advocates for the parties and have perused the papers.

6. It is not much in dispute that the petitioner was detained in exercise of the powers u/s.3(2) of the said Act on the ground that the petitioner was a "bootlegger" and his activities amounted to a threat to public order. The learned advocate for the petitioner has contended that five offences under the Bombay Prohibition Act, 1949, were registered against the petitioner. Now, solitary stray offences registered against the petitioner could not lead to an inference that the petitioner was a

"bootlegger" and that his alleged bootlegging activities raised a threat to public order.

7. The detaining authority has also considered statements of two witnesses whose names have not been disclosed. The learned advocate for the petitioner has argued that the names of the witnesses were required to be disclosed and when the names were not disclosed, the petitioner was unaware about those names and hence, the petitioner could not submit an effective representation to the detaining authority or to the State Government.

8. The learned AGP contends that u/s.9(2) of the said Act, the detaining authority has a power of privilege to withhold the names of the witnesses from the notice of the petitioner. There is no dispute about the same. At the same time, it is required to be considered that such a representation is required to be considered on appropriate material. Before a right or power of privilege is claimed u/s.9(2) of the said Act, the detaining authority has to ascertain by appropriate inquiry that there is a genuine fear or apprehension in the minds of the witnesses on account of which they apprehend fear and therefore, their names were required to be kept away from the notice of the petitioner. In the present case, we find that the records do not show that there was credible material before the detaining authority in order to withhold the names of the witnesses from the notice of the petitioner. In absence of such material on record, it cannot be said that the detaining authority was justified in withholding the names of those witnesses.

9. So, on the one hand, with respect to the registered offences, it could not be said that the illegal activities of the petitioner would lead to a threat to public order, and on the other hand, the statements of witnesses were not considered and their names were not disclosed to the petitioner which would amount to a violation of the principle of natural justice. Therefore, on these counts, the order of detention is required to be quashed and set aside.

10. For the foregoing reasons, this petition is allowed. The impugned order dated 7.12.2003 passed by respondent No.2 is ordered to be quashed and set aside. The detenu is ordered to be set at liberty forthwith, if no longer required in any other case. Rule is made absolute to the aforesaid extent. No order as to costs. D.S. permitted.

[D P Buch, J.]

msp